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MEDTRONIC, INC. 710 MEDTRONIC PARKWAY NE MINNEAPOLIS, MN 55432-9924			EXAMINER JOHNSON III, HENRY M	
			ART UNIT	PAPER NUMBER
			3769	
			NOTIFICATION DATE	DELIVERY MODE
			12/13/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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DETAILED ACTION

Response to Arguments

Applicant's arguments filed November 1, 2010 have been fully considered but they are not persuasive. The amendment to claim 25 is related to detecting a vibration prior to boiling of water in the tissue. Nardella teaches the power may be reduced when the steam is above a selected level, thus teaching the vibrations are associated with levels of steam generation (Col. 6, lines 47-50) and are interpreted as including the period before a boiling point as Nardella is concerned with the effects of steam generation and tissue "pops" (background).

Interview

A telephone interview was initiated by the examiner on 11/18/2010 with Rudolph Hofmann to discuss possible claim amendments to place in condition for allowance. No agreement was reached.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 25-26 and 28-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Nardella (5,733,281). Nardella discloses a method of tissue ablation

Art Unit: 3769

comprising positioning an electrode (energy delivering electrode; Col. 4, lines 20-25, positioning is inherent for an ablation operation), supplying electrical power (electrosurgical energy; Col. 6, lines 54-55), sensing with a sensor (acoustical detection element; Col. 2, lines 46-49) the vibration of the tissue and reducing/halting ("regulating", patented claim 3; power regulation element; col. 8:57-60) power when the vibration reaches a given value. Nardella teaches the power may be reduced when the steam is above a selected level, thus teaching the vibrations are associated with levels of steam generation (Col. 6, lines 47-50) and are interpreted as including the period before a boiling point as Nardella is concerned with the effects of steam (background). The acoustic detection element may be a piezoelectric ceramic crystal (Col. 7, line 35) or a microphone (Col 3, line 4). The sensor of Nardella, be it the piezoelectric crystal or the microphone, senses vibration. It has no ability to differentiate between vibrations from multiple sources. Nardella teaches a feedback system that includes an acoustical detection element, e.g., an ultrasonic transducer, coupled to the surgical tool and the pulse regulation element for acoustically detecting the effects of energy on tissue, such as the generation of steam created during the heating process. The acoustical detection element preferably generates an acoustic output signal, and the power regulation element preferably regulates the application of power to the energy-delivering electrode in response to either the derivative output signal or the acoustic output signal. The term "acoustic" is intended to include any vibratory disturbance of any frequency in a selected fluid, such as air, and includes sonic and ultrasonic waves (Col. 2, lines 46-59). Nardella further discloses a power regulation element in circuit with the surgical

Art Unit: 3769

tool and the acoustical detection element for regulating the power supplied to the energy-delivering electrode in response to the acoustic output (detected vibration) signal (Col. 3, lines 18-23).

Regarding claims 29 and 30, Nardella discloses an output device (Analyzer, Fig. 2, # 130) and an indicator signal (Fig. 2, # 132, signal to RF generator).

Regarding claim 32, PVDF is a piezoelectric polymer (Col. 7, line 36).

Regarding claim 33, sensor (Fig. 2, # 20) is integrated with the electrode (Fig. 2, # 12).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nardella (5,733,281) in view of Nardella (5,334,193). Nardella ('281) incorporates by reference in Col. 9, line 56, Nardella (5,334,193), which discloses impedance feedback control of fluid delivery to treated tissue (see '193 Abstract).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 3769

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Henry M. Johnson, III at telephone number (571)272-4768.

/Henry M. Johnson, III/
Supervisory Patent Examiner, Art Unit 3769